

REMARKS**I. Status of the Claims**

Claims 43-49 are currently pending in the application. In the Amendment, claims 44, 45 and 47-49 have been canceled without prejudice or disclaimer, claim 43 and 46 have been amended and new claim 50 has been added. Upon entry of the amendments, claims 43, 46 and 50 are pending. No new matter has been introduced by these changes. Accordingly, entry and consideration of this Amendment are respectfully requested.

II. Rejections under 35 U.S.C. § 112, first paragraph

Claims 47-49 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement.

Claims 47-49 have been canceled without prejudice or disclaimer, rendering the rejection of these claims moot. Therefore, withdrawal of the rejections is respectfully requested.

III. Rejections under 35 U.S.C. § 112, second paragraph

Claims 43-49 are rejected under 35 U.S.C. § 112, first paragraph, as being allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With reference to claim 43-46, the Examiner asserts that the term “watching and listening unit time” is unclear as claimed. Specifically, on page 3 of the Office Action, the Examiner notes that the Specification at page 4 indicates that “‘watching and listening’ refers to an audience members’ ‘actual viewing’”. Applicant respectfully submits that the specification does not appear to indicate that “‘watching and listening’ refers to an audience members’ ‘actual viewing’” in the cited portion of the specification.

However, pages 7 and 8 of the Specification state that “[t]he time interval for generating the key becomes a unit time for watching and listening (to be referred to as watching and listening unit time hereinafter).” Based on at least this description, the claims appear to be clear or definite.

With reference to claims 47-49, these claims have been canceled without prejudice or disclaimer, rendering the rejection of these claims moot.

In view of the foregoing, reconsideration and withdrawal of the rejections are respectfully requested.

IV. Rejections under 35 U.S.C. § 103

Claims 43-46 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,933,500 to Blatter et al. (“Blatter”) in view of U.S. Patent No. 4,856,062 to Weiss (“Weiss”). Applicant respectfully traverses this rejection for the reasons set forth below.

Blatter involves a video receiver system that receives a video broadcast and generates a program datastream. This datastream may be in either encrypted or decrypted form. A block diagram of this system is shown in Figure 1 of Blatter. However, Blatter does not appear to disclose charging on the basis of a watching and listening time, as recited in these claims. Instead, Blatter merely appears to disclose program-based charging. The Examiner acknowledges this shortcoming of Blatter on page 4 of the Office Action.

However, the Examiner asserts that Weiss suggests charging on the basis of a watching and listening time, as recited in the claims. Applicant respectfully disagrees with this assertion.

Weiss involves a verification system in which two codes are compared to effect verification. As stated at column 8, lines 10-15, this verification may be used to grant access to data stored in one or more host computers. However, Weiss does not appear to require periodic verification once access is granted. For instance, Weiss at column 8, lines 56-60 states “Therefore, after the first computer 20 has calculated the first non-predictable code 40, no other information need be communicated to the first computer 20 from another device in order to gain clearance or access.” Therefore, Weiss (like Blatter) does not involve access on the basis of a watching and listening time.

In applying Weiss, the Examiner points to column 3, lines 45-64. However, this portion of Weiss merely involves the generation of a time-based variable. In fact, Weiss appears to be silent with respect to recording this variable. Beyond this, Weiss provides no suggestion or motivation for the disclosed variable to be used for charging.

In view of the foregoing, claims 43 and 46 are believed to be distinguishable over the cited references. Therefore, withdrawal of the rejections is respectfully requested.

V. Rejections under 35 U.S.C. § 102

Claims 47-49 are rejected under 35 U.S.C. § 102. Although not specifically stated, it appears that these claims are rejected as being allegedly anticipated by Blatter.

Claims 47-49 have been canceled without prejudice or disclaimer, rendering the rejection of these claims moot. Therefore, withdrawal of the rejections is respectfully requested.

VI. Double Patenting Rejections

Claims 43-46 are rejected under the judicially created doctrine of double patenting over claims 1-13 of U.S. Patent No. 6,061,452.

Claims 43, as amended, recites that an encrypted data transmitting method of the present invention comprises the steps of: transmitting a first decoding key of encrypted data and information indicating a next key change time to a receiving side; accepting a request which is issued from the receiving side on the basis of the information indicating the next key change time; upon accepting the request, recording a watching and listening time by integrating a unit time; and charging on the basis of the recorded watching and listening time. The above claimed feature of the present invention is believed to be distinguishable from claims 1-13 of U.S. Patent No. 6,061,452. Claim 46 and new claim 50 are corresponding medium and apparatus claims of the amended independent claim 43 and therefore are also distinguishable from the claims 1-13 of the U.S. Patent '452.

In view of this distinction, Applicant respectfully submits that claims 43, 46 and 50, if allowed, would not be an improper extension of "the right to exclude" in view of the '452 patent. Therefore, reconsideration and withdrawal of the rejections are respectfully requested.

CONCLUSION

Based on the foregoing amendments and remarks, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims and allowance of this application.

AUTHORIZATION


The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 13-4500, Order No. 1232-4396US1.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 13-4500, Order No. 1232-4396US1.

Respectfully submitted,
MORGAN & FINNEGAN, L.L.P.

Dated: 1/13/06

By:


James Hwa
Registration No. 42,680
(202) 857-7887 Telephone
(202) 857-7929 Facsimile

Correspondence Address:

MORGAN & FINNEGAN, L.L.P.
3 World Financial Center
New York, NY 10281-2101